IN THE

Supreme Court of the United States

No. 74-882

LEONOR ALBERTI DE CANAS and
MIGUEL CANAS,

Petitioners,

v.

ANTHONY G. BICA and
JUAN SILVA,

Respondents.

Supreme Court, U. S.
FILED
AUG 1975
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Supreme Court, U. S.
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JUN 11 1975
MICHAEL RODAK, JR., CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

PETITIONERS' RESPONSE TO MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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The Solicitor General of the United States, in response to an invitation from this Court on April 14, 1975, submitted a memorandum for the United States as amicus curiae in this cause on June 6, 1975. That memorandum misreads the doctrine of preemption; it neglects a statutory provision, Title 7 U.S.C. § 2051, as amended 1974, and omits a leading decision of this Court.

First, the Solicitor General represents that the Farm Labor Contractor Registration Act, Title 7 U.S.C. § 2041 *et seq.*, by prohibiting the knowing employment of illegal aliens, preempts California Labor Code § 2805, which also prohibits the knowing employment of illegal aliens. This cause of action, of course, arose prior to the enactment of the federal amendments to which amicus refers. Moreover, the federal Act explicitly recognizes the validity of related state laws:

> This Chapter and the provisions contained herein *are intended to supplement State action* and compliance with this Chapter shall not excuse anyone from compliance with appropriate State law and regulation. 7 U.S.C. § 2051 (1964, as amended, 1974) (emphasis added).

The Solicitor General's designation of California Labor Code § 2805 as not an "appropriate" state law (Amicus Curiae memorandum, p.4.n.4.) is curious in view of the Solicitor General's apparent concession that the federal and state laws achieve identical objectives. Petitioners respectfully submit that the Solicitor General mistakenly rests his amicus brief on the proposition that harmony means preemption, and is further reason for clarification of the preemption doctrine by this Court. A narrow federal law normally does *not* invalidate a broader state law having the same effect, *Kewanee Oil Co., supra.* Just as federal safety rules governing interstate commerce do not preclude a state from passing local traffic laws having an impact on interstate commerce, *South Carolina State Highway Dept. v. Barnwell Brothers,* 303 U.S. 177 (1938), a law governing agricultural employment by interstate labor contractors does not preclude a state from regulating

employment in the same fashion where, as here, the state does not alter federal immigration law.

The Solicitor General points to H.R. 982 (the "Rodino Bill") which would impose federal penalties on the private employment of illegal aliens. No authority is cited, nor is any known, that mere congressional consideration of legislation evidences an intent to preempt the field from state regulation. Moreover, the future enactment of H.R. 982 would harmonize with California Labor Code § 2805. The reasoning of *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), would save the state law in such an instance. Although seemingly dispositive here, that decision is not mentioned in the brief of amicus curiae.

In closing, the petitioner urges the Court to grant its petition for writ of certiorari. The Solicitor General admits that California Labor Code § 2805 implicates problems of preeminent national concern. In the alternative, petitioners suggest that the lower court's order be vacated and the case be remanded for consideration of the recent amendments to the Farm Labor Contractor Registration Act and its effect on the state statute.

Respectfully submitted,

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Dated: June 11, 1975